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Psychiatric Survivors and Experiential Rights

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Human rights may be categorised as belonging to 'three generations': political, social and 'solidarity' rights. This paper considers this schema theoretically, deploying the example of the 'psychiatric survivor' movement in Britain in support of its central claims. Psychiatric survivors comprise groups of psychiatric patients who have campaigned both for political and social rights in addition to a singular form of 'right', which is referred to here as 'experiential'. The paper clarifies the meaning of the 'experiential right' and, drawing upon aspects of social theory, considers how it is to be understood in the context of the 'three generations' schema.

Introduction: 'Three generations of rights'

Writing in the *UNESCO Courier* in 1977, the French jurist and Director of UNESCO's Division of Human Rights and Peace, Karel Vasak, issued the following plea:

> [b]ecause of the changing patterns of society in recent years, it has become imperative to formulate . . . the *third generation of rights*. (1977: 30, emphasis added)

Vasak's argument is this. Progress in the implementation of human rights proceeds in three phases ('three generations') according to a schema which corresponds to the watchwords of the French Revolution: *liberté*, *egalité*, *fraternité*. According to this schema:

(i) 'first generation rights' are political, in the sense characterised by what Isaiah Berlin called 'negative freedom', e.g. the freedom of the individual *from* the repressive intervention of the state (Berlin, 1969: 122–31);
(ii) 'second generation rights' are social in Berlin's sense of 'positive freedom', e.g. the freedom *to do* something which the individual would be unable to do *without* the intervention of the state (ibid.: 131–4); whilst,
(iii) 'third generation rights' may be best summed up in Vasak's own words as,

> *rights of solidarity*. Such rights include the right to development . . . the right to peace and the right to ownership of the . . . heritage of mankind. (ibid., emphasis added)

The notion of first (e.g. freedom of speech) and second (e.g. access to health care) generation rights are wholly familiar, having been embodied in solid juridical forms (e.g. the Declarations of the United Nations). Third generation rights, on the other hand, have been hotly debated and the overall generational schema contested (see Mubangizi, 2004). Following Christian Tomuschat, we are bound to observe that the notion of third generation rights is 'surrounded by deep-going uncertainties' (2003: 50), which

concern their substantive content as well as their apparent lack of legal enforceability ('justiciability'). For it is not immediately apparent under the jurisdiction of which legal machinery the bearer of a 'solidarity right' would pursue a legitimate claim. Faced with this 'justiciability problem', it is tempting to invoke Jeremy Bentham's famous lament that:

> *[r]ight* . . . is the child of law: from *real* laws come *real* rights; but from *imaginary* laws. . .come *imaginary* rights,

such that the notion of 'solidarity rights' would serve as an example not just of juridical 'nonsense' but, more harshly, as Bentham opined, of 'nonsense upon stilts' (original emphases).[1]

Notwithstanding the justiciability problem, I argue that the three generations schema possesses *political* value. Specifically, I deploy the new notion of an *experiential right* as an instance of Vasak's solidarity rights. My purpose is to make intelligible a contemporary feature of human rights discourse especially as it relates to the politics of welfare and mental health. I argue that experiential rights assist in the analysis of the inter-relations obtaining between three distinct political fields. These fields are:

(i) social movements in mental health;
(ii) welfare state provision (e.g. the British NHS);
(iii) the discourse on human rights.

A *theoretical* analysis of these inter-relations is the paper's main aim. One contemporary policy context is, of course, the controversy over the reform of mental health law in England and Wales, a controversy which, notwithstanding the passage of the *Mental Health Act* (2007), remains unresolved (see Pilgrim, 2007). As the accompanying papers in this themed section show, such disputes implicate issues which are not solely 'justiciable' but concern also the historical context of human rights discourse (see Carpenter, this volume) plus the ways in which this discourse inextricably relates to such features of mental health politics as psychiatric power, personal identity and the service user's 'voice' (see Spandler and Calton, Lewis, Warner, this volume). This paper stresses the role of *social theory* in illuminating such social policy debates.

The theoretical argument is this. Mental health social movements issue demands in the direction of the welfare state. These demands do not arise *ex nihilo*, but are rooted in an individual's prior experience of life. In other words, 'psychiatric survivors' – the mental health movement specified here – claim to have experienced *traumas* (interpersonal abuses) which demand reparation from the state in the form of welfare service provision. However, these demands fail to be met via welfare provision, for survivors also claim that far from these traumas being helped via welfare provision, they are often *made worse*. *Institutional* trauma, (e.g. maltreatment) is piled *upon* interpersonal trauma, an exacerbation which results in *further* demands on the state. The notion of the 'experiential right', therefore, signals a double trauma and a double demand: (i) an original interpersonal trauma with a demand for welfare provision; and (ii) a second institutional trauma issuing from welfare provision itself, which results in further demands on the state. In this way, psychiatric survivors and welfare providers relate dialectically via circuits of trauma/demand.

The argument unfolds in the following way. The next section thematises an approach to the inter-relation of 'social policy' and 'social theory', which permeates the paper. The politics of the psychiatric survivor movement in Britain between 1984 and the present day is then sketched in Section 3. This sketch is not intended to provide an exhaustive empirical account but, rather, through the use of exemplary texts, to develop and support the theoretical argument canvassed. This section, which identifies a dialectical relation obtaining between the *experiences* of survivors and their political *demands*, introduces the paper's critical concept: 'experiential rights'. This then raises a question. How may we understand such rights within the framework of the three generations schema outlined above? That question is addressed in Section 4, which outlines the genealogy of human rights discourse theoretically, focussing specifically on the social theory of Claude Lefort (1986, 1988) and his dialogue with the Marxist tradition (e.g. Marx, 1975). Tracking the vicissitudes of human rights in this way clarifies the political value of the experiential right, especially as it pertains to what has been called by Lefort (1986: 239–72, 1988: 21–44), the 'adventure of rights' – the democratic struggle paradigmatic of 'psychiatric survivors'. The closing section summarises the relations obtaining between the paper's key concepts: experiential rights, the democratic 'adventure' and the politics of welfare and mental health.

Social theory/social policy

A word is in order about the approach the paper adopts to the study of 'social policy' in the general sense, an approach which foregrounds the *theoretical* rather than the *empirical* elements. This analysis is *theory-driven*, especially the dialogue between Marx and Lefort which constitutes Section 4. Two justifications guide this perspective.

The first I refer to as social policy's 'conditions of possibility'. By this I mean that 'human rights' emerged in modernity under the twin imperatives of *capitalism* and *industrialisation* – two of social theory's overarching motifs. By tracing the conditions of possibility of human rights, which I do in Section 4, I try to show not merely the historical origins of the 'three generations of rights' but also the possibility of its *critique*. This possibility is realised in the Marxist tradition. That the notion of human rights may be criticised is not a common-sense intuition. But Marx's critique retains its value today not because it is true – Lefort shows decisively, I think, why it is not – but because it provokes a *critical* attitude to social policy which is inherently progressive. According to this perspective, *social theory* is a precondition for *social policy* critique. A hallmark of the papers in this volume is that they are not merely empirical, they provoke a critique of the discourses of mental health and human rights together with cognate terms such as 'social inclusion' (i.e. Carpenter, Lewis, Spandler and Calton, Warner, this issue; also Spandler, 2007).

The second justification of a theory-driven approach is also progressive. It concerns the 'symbolic' dimension of human rights. As Lydia Lewis similarly shows in this issue, human rights are not reducible to the codification of justiciable law and its institutionalisation in courts, law firms etc., for they constitute also a symbolic domain. Lewis is concerned with the 'symbolic violence' (see also Bourdieu, 1992) perpetrated on mental health service users by discourses of 'user involvement'. It is, of course, not a case of denying the materialisation of legal and psychiatric institutions. But to focus upon the symbolic dimension of rights is to recognise that the role they play in society

cannot be explained by these institutions alone; for 'rights' function also within what Emile Durkheim (1960) once referred to as the 'conscience collective' – collective 'ideas', if you like – which animate us to engage, like 'psychiatric survivors', in struggles for a political cause.

Let me clear about this. I am not saying that: (i) social policy *should* always be theory-driven, even less that (ii) the theory *should* be the theory canvassed here – plenty of empirical work and alternative theories (e.g. Lewis's) speak to the contrary. What I *am* suggesting is that the sort of theoretical concerns associated with the linguistic or cultural 'turns' (i.e. the 'symbolic' domain) and with what may loosely be called 'postmodernism' in social theory – of which Lefort is a notable harbinger – *may* make a valuable contribution to social policy critique. This is now recognised in standard social policy texts (e.g. Baldock *et al.*, 2003: 637–8). There are future dialogues to be explored between, on the one hand, the theoretical and the empirical in the study of social policy and, on the other, between the sorts of theoretical commitments expressed here and elsewhere in this issue, a dialogue which may open up new paths for exploration.

Psychiatric survivors and experiential rights

Space restricts all but an adumbrated analysis of the psychiatric survivor movement in Britain from 1984 onwards – so-called in that the main social movement organisation associated with it was Survivors Speak Out (SSO) founded in 1986 (see also Crossley, 2006). However, I want to approach this clarification of 'experiential rights' via a particular 'discursive analytical strategy' (see Andersen, 2003) which hones in on the exemplary texts of one survivor activist only. This is the activist Peter Campbell, founder member of SSO and a prolific writer and commentator on the politics of mental health. It was Campbell who summed up the very *experience* of being a 'survivor' back in 1992:

> [a] growing number of mental health service recipients . . . are choosing to describe themselves as 'survivors'. This is . . . because we survive in societies which devalue. . .our personal experiences. . .But it is chiefly because we have survived an ostensibly helping system which places major obstacles across our path to self-determination. (1992: 117)

Note, here, the presence of what I refer to as the 'double trauma' above: (i) 'we survive in societies which devalue . . . our personal experiences; (ii) 'we have survived an ostensibly helping system' and the way in which that temporal movement (i]>ii]) is inextricably linked with the experience of being a 'survivor'. Campbell's texts are 'exemplary' precisely in the sense that that 'temporal movement', the regular occurrence of which is such an homogenous feature of the psychiatric survivors (see Cresswell, 2005a and b, 2007), is an ever-present in Campbell, providing a grid of intelligibility through which to survey an otherwise heterogeneous field.

Campbell's activism, in fact, pre-dates the formation of SSO by some years (e.g. Campbell, 1983). A long-term 'recipient' of psychiatric services,[2] Campbell had been active in mental health movements in the early 1980s and was also a volunteer with mental health's prominent 'third sector' (voluntary) charity, MIND. That fact is significant, for SSO's activism must be seen as Janus-faced: certainly, it looks, with a transformative eye, towards psychiatry as a public sector provider; but it also looks *back* towards MIND

with the aim of problematising its status as a 'voice' of representation. Campbell had expressed this perspective *vis-à-vis* MIND as early as 1985:

> [t]here are many people who do not want MIND to speak on their behalf. They are capable and willing to speak for themselves. (1985: 17)

Such comments inaugurated a 20-year plus commitment to the survivor-perspective, considered always as the *survivor*-perspective, not as a disembodied 'voice' to be represented by third-parties, but as primarily an *experience* of which third parties possessed *no* experience.

What are the central features of that identity-defining experience? I schematise it in the following way:

(i) As an original experience of *trauma*, conceptualising 'trauma' in its most general sense as a psychical *wound* (see Herman, 1994) which propels the individual into the circuits of welfare service providers. Survivor testimonies of the period in question (see Cresswell, 2005a and b, 2007) bear witness to a range of childhood (e.g. sexual abuse, deprivation) and adult (e.g. domestic violence, unemployment) interpersonal traumas, which propel the individual into the circuit of *psychiatry*.

(ii) Once there, the survivor encounters a *loss of control*, nothing less than an experience of *institutional* trauma, which Campbell has recounted at depth. This 'loss of control' arises through psychiatry's singular features, which it is argued elsewhere (Cresswell, 2008) separate out entirely psychiatric from general medical practice. According to this view, psychiatry deploys coercion, diagnostic and treatment procedures, plus claims to scientificity, the cumulative effect of which provokes that pervasive 'loss of control':

> [t]he idea of [mental] illness is not a . . . liberating force . . . If I am to be confined to a category of person *whose experience is devalued* . . . then it is scarcely possible to expect that my control over my life will ever be more than extremely circumscribed. (Campbell, 1996: 57, emphasis added)

(iii) Now, Campbell closes the passage directly quoted above with the following line:

> [i]f my *experience* is not *valued* I cannot be *whole* (ibid., emphases added),

a lament which would *appear* to align him with certain aspects of 1960s 'anti-psychiatry' (e.g. Laing, 1990). It is true, of course, that R.D. Laing also posited the notion of an experiential 'split' within a putative 'wholeness' of human experience (ibid.: 19), which 'split' psychiatry was unable to suture (ibid.: 31), a failure which Laing indicted. Campbell clearly acknowledged a debt (e.g. 1993: 10–11). Yet, he nonetheless maintained that Laing's legacy for SSO was to be understood as 'emotional and spiritual' only 'rather than programmatic and practical' (Campbell, 1996: 221). It was not, in other words, to be considered a *political* debt.

This point is apposite insofar as a close comparison of 'anti-psychiatry' and SSO evinces *discontinuities* at the level of practice *vis-à-vis* the apparently *continuous* concept of the

split experiential whole. For if Laing's lament of the fractured 'whole' constituted only a transient 'radical trip' (see Sedgwick, 1982), Campbell's lament constituted a political practice of a radically different kind.

Everything turns here upon the way in which 'experience' relates dialectically to the imperative of 'making political demands' upon, as Peter Sedgwick remarked, 'the health service facilities of the society in which we live' (Sedgwick, 1982: 40). In the contrasting perspectives of Campbell and Laing, neither is the 'experiential' nor the 'demand' side of this dialectic equivalent. Without having space to dwell here on Laing, we may say that the experiential component, for him, related precisely to a 'split' of which he had *no* experience but which he nevertheless *represented* in the most philosophical form; whilst the 'demand' side, expressed its most radical form, not in terms of demands for *collective* welfare provision but, transiently, as Sedgwick observed, 'outside the bureaucratic compass of the state' (1982: 252) in the singular form of the 'therapeutic community' at Kingsley Hall (see Barnes and Berke, 1971).

Now, contrast Campbell's practice to Laing's. First, the experiential 'side'. Clearly, survivors are concerned with experiences of which they have '*direct* experience' (Pembroke, 1994: 3–4) and in support of which third parties may function only as *allies*. Survivors represent that experience, not via such allies, but *directly*; that is to say, through practices of individual and collective *self*-representation (see Campbell, 1989, 1991). However, the fact that third parties *may* function as 'allies' is not without consequence; it bears directly upon the issue of 'making political demands', which survivors pursue not only *in the direction of* putative 'allies' but, simultaneously, *in the process of* making them 'allies'. This impulse towards alliance-formation is both directly *political*, in that it aims to transform, *contra* Laing, *both* collective welfare provision (e.g. the NHS) *and* third-sector providers (e.g. MIND), but also *pedagogic* – it proselytises the professional worker towards the movement's statements and norms (see Cresswell, 2005a).

What relation obtains, then, between these 'political demands' and the trauma of the 'split experiential whole' canvassed above? At this point Karel Vasak's 'three generations of human rights' notion swings back into view. How? Because the demands advanced by survivors assume the paradigmatic form of an *assertion of rights* and this claim is not deployed for juridical content alone but, rather, for the *legitimacy* which it accords survivor-experience itself, which Campbell et al. (1999) defined as nothing less than the 'madness-experience'. This singular assertion of a *right* to the 'madness-experience' is one for which I am proposing a name: the 'experiential right'.

In procuring that right, it is clear how the function of the professional ally assumes a *political* value. For, in asserting the experiential right, in insisting that legitimacy be accorded the madness-experience, the survivor *politicises* circuits of welfare provision for the sake of procuring that right. In this way is the fate of the 'split experiential whole' tied to the legitimacy accorded the madness-experience by the professional ally. The survivor asserts that experience and, in simultaneously announcing that claim, demands a relation of *solidarity* with the professional, the purpose of which is to *re*-claim the 'wholeness of human experience'. And it is with this relation in mind that we need to return to Vasak's three generations schema outlined above. For I hold that the notion of the experiential right introduced here is neither a first generation political right, nor a second generation social right, but, rather, a third generation solidarity right which functions precisely to *revalue* a formerly *devalued* experience and does so via a solidarity forged within circuits of welfare provision.

Let us pause to consider this claim. It may be granted validity insofar as it is hard to deny that such solidarities proliferated in the period Campbell chronicles. Equally, it is hard to deny the *democratic* status of such solidarities as manifested in the practices of such organisations as SSO and, later, the Hearing Voices Network (HVN) (see James, 2001) and the National Self-Harm Network (NSHN) (see Pembroke, 1995) for which, as the names suggest, activism depends upon *solidarity-networks* of survivors and professional allies. Such 'networks' have stimulated 'new understandings' (Campbell, 1999) of trauma whilst democratising aspects of bureaucratised welfare provision.

Yet, hereabouts some objections emerge. These bear closely upon those 'deep-going uncertainties' (Tomuschat, 2003: 50) which surround Vasak's notion of solidarity rights; for, it may surely be argued that the revalorisation of survivor-experience is not at all 'where the action is' with regard to the politicisation of mental health. There have, indeed, been noisier theatres of action, in respect of which experiential rights appear at best epiphenomenal and, at worst, trivial. Thought turns here towards the controversies surrounding such clearly justiciable issues as the applicability of anti-discriminatory legislation in psychiatry (see Sayce, 2000) and the struggle over Mental Health Act reform within which another 'network', the Mental Health Alliance, assumed such a prominent role (see Carpenter, this issue; also Pilgrim, 2007). Compared to such controversies, the fate of the 'split experiential whole' may sound apolitical or over-psychologised. To echo Bentham, it seems that the experiential right here advanced is at risk of becoming not only juridical 'nonsense' but also, worse, faced with struggles for justiciable rights, non-justiciable 'nonsense upon stilts'.

I contest that objection. Rather, I argue for a conceptual *reversal*; that is to say, for a reversal in the order of prioritisation which underpins the historiography of Vasak's conception. Notwithstanding the imperative of social and political rights, I argue for the *political value* of the 'experiential right'. That is not a value quickly established; it requires the application of a cognitive 'switch' – what psychologists have referred to as the *gestalt-switch*, characterised perceptually by such phenomena as the 'Rubin vase' (see Rubin, 1949; cf. Lewis, this issue). The 'switch' here suggested is this: rather than cognizing the emergence of solidarity rights, as Vasak perceived them, as *resting* upon the prior advancement of social and political rights, I argue, on the contrary, that the advancement of such rights is *constituted* by the assertion, *a priori*, of the experiential right. The experiential right, in *gestalt* terms, is rather the 'ground' upon which is perceived the 'figure' of human rights.

To sum up concisely: this section has advanced the theoretical notion of the 'experiential right' as evidenced in the exemplary texts of a psychiatric survivor. The penultimate section clarifies the political value of that right within the context of the three generations schema outlined above. And it is with that clarification in mind that I turn now to the work of the French social theorist, Claude Lefort (1986, 1988).

Claude Lefort and the 'adventure of rights'

Lefort takes as his point of departure Marx's critique of 1844 apropos the discourse on human rights. Marx argued that, far from advancing a beneficent juridical claim, the discourse on the 'rights of man', as embodied in the Declaration of the French Assembly of 1789, in fact instated a capitalist *ideology* at the heart of the modern state. Why? For Marx, the discourse on rights was *ideological* precisely in that it presupposed that

very 'individualism' upon which is simultaneously predicated capitalist social relations. Such 'individualism' contrasted with what Marx would later call our essentially 'social being' (1968: 182). Against the backdrop of this new awareness of rights, Marx argued canonically that:

> [i]t [i.e. human rights] is a question of the liberty of man *as an isolated monad* . . . the right of man to liberty is based not on the *association* of man with man, but on the *separation* of man from man. (1975: 162/163, emphases added)

– an indictment of human rights as an ideological smokescreen which remains recognisably Marxist today (e.g. ŽiŽek, 2005). However, this was not a conception Lefort shared. As John Thompson has noted, Lefort's analytical strategy is *measured* to the extent that he 'acknowledges Marx's insight as well as his blindness, the strengths . . . as well as . . . the simplifications' contained in his thought (Thompson, 1986: 2). According to this view, Marx's critique of human rights is one such 'blindness', so that what becomes imperative for Lefort is the need to '*extricate* ourselves from Marx's framework if we are to give the notion of . . . rights its full meaning' (1986: 245, emphasis added).

But how does Marx's 'blindness' arise? And how are we 'to give the notion of human rights its *full meaning*'? Lefort provides a twofold response.

First, it is not only a question, as Vasak implies, of attaching a *progressive* historiography to the discourse on rights. According to that schema, solidarity rights are predicated upon '*changing* patterns of society in recent years' (1977: 30, emphasis added). Of course, Lefort is quick to acknowledge that Vasak's plea *is* historically grounded; as he remarks, 'Marx's framework has been overtaken by the events of our time' (Lefort, 1986: 248). Lefort was fully aware of the emergence of politicisations variously subsumed beneath the rubric of 'new social movements' (Crossley, 2002: 149–167) which, like psychiatric survivors, advanced characteristic identity-claims. Yet, Lefort's objections cut deeper than the post-modern mantra that Marx is *passé*. Lefort's strategy consists precisely in reading Marx *against* Marx, a strategy which bears upon the paradigmatic Marxian claim concerning the 'ideology' of human rights. With perspicuity, Lefort detects a 'blindness' in Marx: at one and the same time he (Marx) denounces the 'bourgeois revolution' (Lefort, 1986: 250) which subsumes *both* the discourse on rights *and* capitalist social relations; yet he is only able to do so by means of the self-same *gestalt*. This is Lefort's critique:

> Marx falls into . . . a trap, which, on other occasions. . .he was very skilful at dismantling: that of *ideology*. He allows himself to become the prisoner of the ideological version of rights, without examining *what they mean in practice, what profound changes they bring to social life*. (ibid.: 248, emphases added)

This announces his second point. Cognizing the 'full meaning' of rights, for Lefort, necessitates, not the ideology-critique at which 'Marx excels' (Lefort, 1988: 33), but, rather, an analysis rooted in the *material practices* of life, practices which contain also a *symbolic* dimension. In this sense, whilst he nevertheless reads Marx *against* Marx, Lefort remains true to the thesis of 'social being'. To repeat: we must examine human rights 'in practice' if we are to approach Lefort's 'full meaning'; if we are to truly appreciate the 'profound changes they bring to social life'.

What are those changes? The emergence of rights constitutes what Lefort christens the 'adventure of rights' (1988: 24/28/37). That 'adventure' is an 'adventure' of 'social being', or, better, to give it a historiographical thrust, an 'adventure' in 'social becoming' (see Crossley, 1996). How? We have to reckon with the 'historical mutation' of what Lefort dubs the 'democratic revolution', of which the discourse on human rights is a singular feature (Lefort, 1988: 36). This 'mutation' inscribed a series of 'separations' into the political field far more profound than the 'separation of powers' thesis familiar from liberal discourse. Rather, the 'separations' to which Lefort refers signify,

> an unprecedented event constituted by the *separation of power and right* . . . the simultaneous separation of the principle of power, the principle of law and the principle of knowledge. (1986: 255)

In the wake of the 'democratic revolution' the concept of 'right' is no longer isomorphic with 'power'; no longer is it embodied in the 'privileged space' of Sovereign and State. Power has become, as Lefort observes, 'deprived of a fixed point' (ibid.: 256), propelled beyond the boundary of 'privileged space' to some place 'new'; to a 'public space' for which 'power', far from being 'fixed', necessarily partakes in a 'theatre of contestation' (ibid.: 259).

Democratic consequences attend this 'mutation'. For into that 'gap' between 'power' and 'right' flood a range of claims and assertions, based not on a power that is 'fixed' but on '*new* modes of thought and action' (Lefort, 1986: 240, emphasis added), the 'newness' of which heralds the 'adventure of rights'. True, these claims take the form of *justiciable* rights fully in accord with Vasak's generational schema. In a sense that should satisfy Bentham, these are, indeed, '*real* rights' borne of '*real* laws'. But beyond these formal concerns (1988: 31/32), Lefort is at pains to reveal the discourse on rights as a discourse of 'social becoming'; which is to say, he reveals it as it appears 'in practice' in a newly *political* field.

Again, reading Marx *against* Marx, Lefort re-reads the French declarations to disclose, not the Marxian critique, but the Marxian 'blindness'; in each and every case for which Marx detects an ideological function – the rights to liberty, opinion etc. – Lefort counterposes a democratic demand. The point is 'not so much what Marx sees . . . as what he is unable to find' (1986: 249); namely, 'the fact that any human action in the public sphere . . . necessarily *links the subject to other subjects*' (ibid., emphasis added). According to this view, what subtends the adventure of rights is nothing less than a 'new mode of access to the public sphere' for which 'freedom of opinion' has not an ideological function, as it had for Marx, but is, rather, a 'freedom of *relationships*' (ibid.: 250, emphasis added); for it is 'our right', our 'most precious right' (ibid.), Lefort asserts, 'to step out' of ourselves 'and to make contact with others through speech, writing and thought' (ibid.: 250–1). Moreover, this 'making contact', this 'circulation of thought and opinion . . . falls outside the authority of political power' (ibid.) taking form in 'centres that power cannot master' (ibid.: 259).

Should we assert, then, with Bentham, that these *are* 'real rights' borne of 'real laws' – and that that exhausts the meaning of rights? Lefort disagrees. For him it could not be the case that justiciable law *alone* exhausted the meaning of rights. Of course, it is true that the 'democratic revolution' is a historical 'fact'; it may be dated, named

and its institutionalisations 'listed' (ibid.: 259–60). Yet, what this fails to subsume is an irreducibly *symbolic* dimension to the discourse on rights (1986: 259; 1988: 38). Here, the 'symbolic', as Lefort deploys it, bears two meanings. It refers to the level of language and to the wider compass of 'signs' (see Cresswell, 2005b) – hence, the centrality Lefort always assigns to the conjuncture of 'communication' and 'right' in the public sphere. What matters is not just the existence of rights, but their *declaration* 'in practice':

> by reducing the source of right to the . . . utterance of right they [modern democrats] grant recognition to *the right to have rights* and this gives rise to an *adventure that is unpredictable*. (1998: 38, emphases added)

But, in a second sense, the 'symbolic' refers to a 'theatre of contestation', which is, frankly, 'imaginary'. This meaning is not pejorative but refers, rather, to that element of 'signs' which, even in the presence of justiciable law, cannot be *literally* captured. Lefort's thinking is subtle on this point, but his meaning is clear. The 'imaginary' elements of a political regime contain elements which function as 'generative principles' (ibid.: 259–60). These are not in themselves justiciable and may even resist clarification: Lefort calls them 'indefinable entities' (ibid.: 272) and the examples he gives include 'State', 'Society', 'the People', 'the Nation' and, of course, 'Human Rights'. The reason why such principles are 'indefinable' is that, for Lefort, the 'public space' which they occupy is simultaneously an '*empty* space' (ibid.: 256, emphasis added) – in the 'theatre of contestation' their defining features are precisely *that over which the contest is fought*.

The upshot of Lefort's analysis is to erect a *distinction* between the 'positive institutions' (1986: 260) associated with rights – the legal system backed by the state – and the *symbolic* dimensions which 'animate' (ibid.) them. These symbolic dimensions must be considered *a priori* in that they have 'become a *constitutive* element of political society' (ibid.: 259, emphasis added) and a 'generative' principle of rights (ibid.: 260). In short, we cannot have justiciable rights without the *a priori* 'awareness of rights' (ibid.). And that 'awareness' is not in itself justiciable, but is part of an adventure which is as much 'symbolic' as 'real'. As Lefort concludes: the democratic adventure itself is not justiciable, 'it is bound up with a way of *being* in society' (ibid.: emphasis added).

Democracy and the claims of 'experience'

The argument may now be concluded by returning to those 'exemplary' texts of the psychiatric survivor Peter Campbell in light of the social theory outlined above. The task is to incorporate into this analysis the theoretical concerns of Lefort and the 'adventure of rights'. What does Lefort's 'original account of the *political* forms of. . .society' (Thompson, 1986: 2, emphasis added) *add* to Vasak's three generations of rights schema *and* to our understanding of the politics of welfare and mental health? My conclusions will be both *specific* and *general*.

To be *specific*: the politics of mental health could not be cognized if we perceive that politicisation *only* as a contest over justiciable rights. Of course, it is *that*, and few would be so rash as to deny that the 'theatre of contestation' which in the field of mental health *should* include concerns with such matters as employment discrimination against 'mental patients', the protection of 'patients' against coercive treatment, the rights of access to

health care etc. Psychiatric survivors need all the defences, all the opportunities provided by first and second generation rights, and they need them as any other citizen.

But, in this respect, Peter Campbell's texts are not only exemplary but salutary. What he calls the 'madness-experience' is not a justiciable right. It may be *legitimised* but this legitimation is not itself a question of law, it is a question of the *politicisation* of the mental health field. It is a *solidarity* forged through the *alliance* of those called 'sane' and those called 'mad' that legitimises the madness-experience and not the formulation of justiciable law. Spandler and Calton (in this issue), for instance, build a convincing case for what they call 'psychiatric pluralism' – alternative non-medical perspectives on the 'madness-experience' – based precisely upon solidarities forged between 'critical practitioners'[3] and psychiatric survivors.

Lefort, for his part, saw equally clearly the role that *legitimation* plays within the more 'symbolic' dimension of rights. What he calls the *a priori* 'awareness of rights' is a game that is staged in a 'theatre' of language and signs, for which the stake of the game is precisely the contest over what is *not* now, but what *may* yet become, 'legitimate'. The game is an adventure in social becoming; the outcome is unpredictable:

> [t]he division between the legitimate and the illegitimate . . . invites us to replace the notion of a regime governed by laws . . . by the notion of a regime founded upon *the legitimacy of a debate as to what is legitimate and what is illegitimate*. (Lefort,1988: 39, original emphasis)

Now, this is, of course, a *general* point, and, *in general*, it tends to problematise the schema of the three generations of rights. This is not the same as saying that Vasak was wrong. It agrees with Tomuschat's and Bentham's concerns about the justiciability of the solidarity right. Solidarity is not a justiciable right. But whoever thought that it was? Solidarity is a political practice; it is a manifestation, as Lefort argued, of 'a way of *being* in society' (1986: 260, emphasis added), a way of 'being' which is *a priori* to the justiciability of rights. All the papers in this issue argue, each in its own way, that psychiatry needs to discover a new way of 'social becoming' if it is to realise the democratic potential of 'rights'.

In claiming this, I am not advancing an *ahistorical* thesis, much less an *essentialist* one. I am not saying that Vasak got his history wrong or that a human nature exists as a *foundation* upon which such rights may be based. Of course, the 'rights of man' *were* proclaimed then; *later*, the welfare state. And these, as Vasak knew, are progressive. We know very well the exclusionary practices of those original rights and the subsequent struggles for their reclamation (see Scott, 1996; also Williams, 1991), not least, as recent controversies over legislative reform in England and Wales demonstrate, in the field of mental health. What I am saying is that we get our historiography wrong if we assert that the claims of 'experience' are only *emergent*, that they *emerge* as the *terminal-point* of a teleological adventure. In this sense, the historiography of first, *then* second, *then* third generations is not so much false as misleading. Lefort's return, rather, to that *zero-point* of the discourse on rights, and to the dialogue with Marx, is salutary. His distinction between the 'real' of the institutionalisation of rights and the 'symbolic' domain for which an *a priori* 'awareness of rights' grants us the 'right to have rights', was *always already* present in that zero-point. It was not an 'origin; but the historiography is inseparable from a more 'symbolic' domain.

The specific and the general entwine. We mislead ourselves if we believe that Campbell's concern with the 'split experiential whole' is paradigmatically post-modern. The lament of the fractured whole also was always already present in that zero-point. Both the 'split' and its desired reclamation is a constitutive moment in the democratic adventure. Campbell was protesting specifically – '[i]f my experience is not valued I cannot be whole' – the general goal of a movement. But the fracture and the lament are always there, a symbol, as Lefort says, which 'haunts' democracy (1986: 272) and a fracture which a politics of mental health has to progressively try to repair.

Notes

1 See URL: http://www.law.georgetown.edu/faculty/lpw/documents/Bentham_Anarchical_Fallacies.pdf – consulted 17/04/08.

2 See URL: http://www.insidestories.org/ – consulted 16/04/08.

3 See Pat Bracken, URL: http://www.soteria.freeuk.com/Brackenbeyond.htm – consulted 18/04/08.

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